SENATE BILL NO. _____ HOUSE BILL NO. _____

A BILL to amend and reenact §§ 60.2-226, 60.2-612, and 60.2-618 of the Code of Virginia and to amend the Code of Virginia by adding sections numbered §§ 60.2-222.1 and 60.2-224.1, relating to unemployment compensation; part-time workers.

Be it enacted by the General Assembly of Virginia:

1. That §§ 60.2-226, 60.2-612, and 60.2-618 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding sections numbered §§ 60.2-222.1 and 60.2-224.1 as follows:

§ 60.2-222.1. Full-time work.

"Full-time work" means employment performed for a minimum of the number of hours or days per week currently established by schedule, custom, or otherwise as constituting a week of full-time work for the type of service an individual performs for an employing unit.

§ 60.2-224.1. Part-time work.

A. "Part-time work" means employment performed for fewer than the number of hours or days per week currently established by schedule, custom, or otherwise as constituting a week of full-time work for the type of service an individual performs for an employing unit.

B. "Part-time worker" means an individual:

1. Who restricts his availability to exclusively part-time work; and

2. a. Who earned at least a portion of his base-period wages from part-time work and who is or was employed in the part-time labor market;

b. Whose most recent employment, prior to separation, was part-time work; or

c. Who has a medical condition or other personal circumstance evidencing good cause, including the circumstances described in subdivisions A 1 through 6 of § 60.2-802.

§ 60.2-226. Unemployment.

A. An individual shall be deemed "unemployed"~~ in~~:

1. In any week during which he performs no services and with respect to which no wages are payable to him~~, or in~~;

2. In any week of less than full-time work if the wages payable to him with respect to such week are less than the total of his weekly benefit amount and the income disregard amount specified in § 60.2-603; or

3. For a part-time worker, in any week of less than such worker's customary hours in part-time work if the wages payable to the worker with respect to such week are less than the total of his weekly benefit amount and the income disregard amount specified in § 60.2-603.

Wages shall be deemed payable to an individual with respect to any week for which wages are due. An individual's week of unemployment shall be deemed to commence only after his registration at an employment office, except as the Commission may by regulation otherwise prescribe.

B. Notwithstanding any other provisions of this title, no individual shall be deemed unemployed with respect to any week he earns less than his weekly benefit amount solely because he did not work on a legal holiday as defined in § 2.2-3300.

§ 60.2-612. Benefit eligibility conditions.

A. An unemployed individual shall be eligible to receive benefits for any week only if the Commission finds that:

1. He has, in the highest two quarters of earnings within his base period, been paid wages in employment for employers that are equal to not less than the lowest amount appearing in Column A of the "Benefit Table" appearing in § 60.2-602 on the line which extends through Division C and on which in Column B of the "Benefit Table" appears his weekly benefit amount. Such wages shall be earned in not less than two quarters.

2. a. His total or partial unemployment is not due to a labor dispute in active progress or to shutdown or start-up operations caused by such dispute which exists (i) at the factory, establishment, or other premises, including a vessel, at which he is or was last employed, or (ii) at a factory, establishment or other premises, including a vessel, either within or without this Commonwealth, which (a) is owned or operated by the same employing unit which owns or operates the premises at which he is or was last

employed and (b) supplies materials or services necessary to the continued and usual operation of the premises at which he is or was last employed. For the purposes of this subdivision, a labor dispute does not include a lockout by an employer, and an individual who otherwise qualifies for benefits under this section shall not be denied benefits due to a lockout except for any week during which (1) the recognized or certified collective bargaining representative of the locked-out employees refuses to meet under reasonable conditions with the employer to discuss the issues giving rise to the lockout, (2) there is a final adjudication under the federal National Labor Relations Act, 29 U.S.C. § 151 et seq., that during the period of the lockout the recognized or certified collective bargaining representative of the locked-out employees has refused to bargain in good faith with the employer over issues giving rise to the lockout, or (3) the lockout has resulted as a direct consequence of a violation of the provisions of an existing collective bargaining agreement by the recognized or certified collective bargaining representative of the locked-out employees. This subdivision shall not apply if it is shown to the satisfaction of the Commission that:

(A) He is not participating in or financing or directly interested in the labor dispute; and

(B) He does not belong to a grade or class of workers of which, immediately before the commencement of the labor dispute, there were members employed at the premises, including a vessel, at which the labor dispute occurs, any of whom are participating in or financing or directly interested in the dispute.

b. If separate branches of work which are commonly conducted as separate businesses at separate premises are conducted in separate departments of the same premises, each such department shall, for the purposes of this subdivision, be deemed to be a separate factory, establishment or other premises. Membership in a union, or the payment of regular dues to a bona fide labor organization, however, shall not alone constitute financing a labor dispute.

3. He is not receiving, has not received or is not seeking unemployment benefits under an unemployment compensation law of any other state or of the United States; however, if the appropriate agency of such other state or of the United States finally determines that he is not entitled to such unemployment benefits, this subdivision shall not apply.

4. He is not on a bona fide paid vacation. If an individual is paid vacation pay for any week in an amount less than the individual's weekly benefit amount his eligibility for benefits shall be computed under the provisions of § 60.2-603.

5. He has registered for work and thereafter has continued to report at an employment office in accordance with such regulations as the Commission may prescribe. The Commission may, by regulation, waive or alter either or both of the requirements of this subdivision for certain types of cases when it finds that compliance with such requirements would be oppressive, or would be inconsistent with the purposes of this title.

6. He has made a claim for benefits in accordance with regulations the Commission may prescribe.

7. a. He is able to work, is available for work, and is actively seeking and unable to obtain suitable work. Every claimant who is totally unemployed shall report to the Commission the names of employers contacted each week in his effort to obtain work. This information may be subject to employer verification by the Commission through a program designed for that purpose. The Commission may determine that registration by a claimant with the Virginia State Job Service may constitute a valid employer contact and satisfy the search for work requirement of this subsection in labor market areas where job opportunities are limited. The Commission may determine that an individual, whose usual and customary means of soliciting work in his occupation is through contact with a single hiring hall which makes contacts with multiple employers on behalf of the claimant, meets the requirement that he be actively seeking and unable to obtain suitable work by contacting that hiring hall alone. In areas of high unemployment, as determined by the Commission, the Commission has the authority to adjust the requirement that he be actively seeking and unable to obtain suitable work.

b. An individual who leaves the normal labor market area of the individual for the major portion of any week is presumed to be unavailable for work within the meaning of this section. This presumption may be overcome if the individual establishes to the satisfaction of the Commission that the individual has conducted a bona fide search for work and has been reasonably accessible to suitable work in the labor market area in which the individual spent the major portion of the week to which the presumption applies.

c. An individual whose type of work is such that it is performed by individuals working two or more shifts in a 24-hour period shall not be deemed unavailable for work if the individual is currently enrolled in one or more classes of education related to employment or is continuing in a certificate or degree program at an institution of higher education, provided that the enrollment would only limit the individual's availability for one shift and the individual is otherwise available to work any of the other shifts.

d. An individual who is a part-time worker and who is otherwise eligible shall not be deemed unavailable for work under this subdivision 7 in any week during which such individual is able to work part-time and available for and seeking part-time work.

8. He has given notice of resignation to his employer and the employer subsequently made the termination of employment effective prior to the date of termination as given in the notice, but in no case shall unemployment compensation benefits awarded under this subdivision exceed two weeks; provided, that the claimant could not establish good cause for leaving work pursuant to § 60.2-618 and was not discharged for misconduct as provided in § 60.2-618.

9. Beginning January 6, 1991, he has served a waiting period of one week during which he was eligible for benefits under this section in all other respects and has not received benefits, except that only one waiting week shall be required of such individual within any benefit year. For claims filed effective November 28, 1999, and after, this requirement shall be waived for any individual whose unemployment was caused by his employer terminating operations, closing its business or declaring bankruptcy without paying the final wages earned as required by § 40.1-29 of the Code of Virginia. Notwithstanding any other provision of this title, if an employer who terminates operations, closes its business or declares bankruptcy pays an individual his final wages after the period of time prescribed by § 40.1-29 of the Code of Virginia, such payment shall not be offset against the benefits the individual was otherwise entitled to receive and shall not, under any circumstances, cause such individual to be declared overpaid benefits.

10. He is not imprisoned or confined in jail.

11. He participates in reemployment services, such as job search assistance services, if he has been determined to be likely to exhaust regular benefits and need reemployment services pursuant to a profiling

system established by the Commission, unless the Commission determines that (i) such claimant has completed such services or (ii) there is good cause for such claimant's failure to participate in such services.

B. Prior to any individual receiving benefits under this chapter, the Commission shall conduct an incarceration check and an employment identification check to verify the status of the unemployed individual seeking a claim for benefits.

§ 60.2-618. Disqualification for benefits.

An individual shall be disqualified for benefits upon separation from the last employing unit for whom he has worked 30 days or 240 hours or from any subsequent employing unit:

1. For any week benefits are claimed until he has performed services for an employer (i) during 30 days, whether or not such days are consecutive, or (ii) for 240 hours, and subsequently becomes totally or partially separated from such employment, if the Commission finds such individual is unemployed because he left work voluntarily without good cause.

If (a) at the time of commencing employment with such employing unit an individual is enrolled in an accredited academic program of study provided by an institution of higher education for students that have been awarded a baccalaureate degree, which academic program culminates in the awarding of a master's, doctoral, or professional degree; (b) the individual's employment with such employing unit commenced and ended during the period between spring and fall semesters of the academic program in which the individual is enrolled; and (c) the individual returned to such academic program following his separation from such employing unit, there shall be a rebuttable presumption that the individual left work voluntarily.

As used in this chapter, "good cause" shall not include (1) voluntarily leaving work with an employer to become self-employed or (2) voluntarily leaving work with an employer to accompany or to join his or her spouse in a new locality, except where an individual leaves employment to accompany a spouse to the location of the spouse's new duty assignment if (A) the spouse is on active duty in the military or naval services of the United States; (B) the spouse's relocation to a new military-related assignment is pursuant to a permanent change of station order; (C) the location of the spouse's new duty assignment is

not readily accessible from the individual's place of employment; and (D) except for members of the Virginia National Guard relocating to a new assignment within the Commonwealth, the spouse's new duty assignment is located in a state that, pursuant to statute, does not deem a person accompanying a military spouse as a person leaving work voluntarily without good cause. An individual shall not be deemed to have voluntarily left work solely because the separation was in accordance with a seniority-based policy.

2. a. For any week benefits are claimed until he has performed services for an employer (i) during 30 days, whether or not such days are consecutive, or (ii) for 240 hours, and subsequently becomes totally or partially separated from such employment, if the Commission finds such individual is unemployed because he has been discharged for misconduct connected with his work.

b. For the purpose of this subdivision, "misconduct" includes, but shall not be limited to:

(1) An employee's confirmed positive test for a nonprescribed controlled substance, identified as such in Chapter 34 (§ 54.1-3400 et seq.) of Title 54.1, where such test was conducted at the direction of his employer in conjunction with the employer's administration and enforcement of a known workplace drug policy. Such test shall have been performed, and a sample collected, in accordance with scientifically recognized standards by a laboratory accredited by the United States Department of Health and Human Services, or the College of American Pathology, or the American Association for Clinical Chemistry, or the equivalent, or shall have been a United States Department of Transportation-qualified drug screen conducted in accordance with the employer's bona fide drug policy. The Commission may consider evidence of mitigating circumstances in determining whether misconduct occurred.

(2) An employee's intentionally false or misleading statement of a material nature concerning past criminal convictions made in a written job application furnished to the employer, where such statement was a basis for the termination and the employer terminated the employee promptly upon the discovery thereof. The Commission may consider evidence of mitigating circumstances in determining whether misconduct occurred.

(3) A willful and deliberate violation of a standard or regulation of the Commonwealth, by an employee of an employer licensed or certified by the Commonwealth, which violation would cause the employer to be sanctioned or have its license or certification suspended by the Commonwealth. The

Commission may consider evidence of mitigating circumstances in determining whether misconduct occurred.

(4) Chronic absenteeism or tardiness in deliberate violation of a known policy of the employer or one or more unapproved absences following a written reprimand or warning relating to more than one unapproved absence. The Commission may consider evidence of mitigating circumstances in determining whether misconduct occurred.

(5) An employee's loss of or failure to renew a license or certification that is a requisite of the position held by the employee, provided the employer is not at fault for the employee's loss of or failure to renew the license or certification. The Commission may consider evidence of mitigating circumstances in determining whether misconduct occurred.

3. a. If it is determined by the Commission that such individual has failed, without good cause, either to apply for available, suitable work when so directed by the employment office or the Commission or to accept suitable work when offered him. The disqualification shall commence with the week in which such failure occurred, and shall continue for the period of unemployment next ensuing until he has performed services for an employer (i) during 30 days, whether or not such days are consecutive, or (ii) for 240 hours, and subsequently becomes totally or partially separated from such employment.

b. In determining whether or not any work is suitable for an individual, the Commission shall consider the degree of risk involved to his health, safety and morals, his physical fitness and prior training, his experience, his length of unemployment and the accessibility of the available work from his residence.

c. No work shall be deemed suitable and benefits shall not be denied under this title to any otherwise eligible individual for refusing to accept new work under any of the following conditions:

(1) If the position offered is vacant due directly to a strike, lockout, or other labor dispute;

(2) If the wages, hours, or other conditions of the work offered are substantially less favorable to the individual than those prevailing for similar work in the locality; or

(3) If as a condition of being employed the individual would be required to join a company union or to resign from or refrain from joining any bona fide labor organization.

d. No individual shall be qualified for benefits during any week that such individual, in connection with an offer of suitable work, has a confirmed positive test for a nonprescribed controlled substance, identified as such in Chapter 34 (§ 54.1-3400 et seq.) of Title 54.1, if the test is required as a condition of employment and (i) performed, and a sample is collected, in accordance with scientifically recognized standards by a laboratory accredited by the United States Department of Health and Human Services, or the College of American Pathology, or the American Association for Clinical Chemistry, or the equivalent, or (ii) a United States Department of Transportation-qualified drug screen conducted in accordance with the employer's bona fide drug policy. The disqualification shall commence with the week in which such a test was conducted, and shall continue for the period of unemployment next ensuing until he has performed services for an employer (i) during 30 days, whether or not such days are consecutive, or (ii) for 240 hours, and subsequently becomes totally or partially separated from such employment.

e. No part-time worker shall be disqualified for failure to accept part-time work pursuant to this section if (i) the hours offered in such part-time work are not comparable to the worker's part-time work in the base period, (ii) the hours offered are not comparable to the worker's hours at the time of the most recent separation from employment, or (iii) the individual qualifies as a part-time worker on the basis of a medical condition or personal circumstance as described in subdivision B 2 c of § 60.2-224.1 and the hours offered conflict with or exceed the hours the worker is able to work. No part-time worker shall be disqualified for failure to accept full-time work.

4. For 52 weeks, beginning with the date of the determination or decision, if the Commission finds that such individual, within 36 calendar months immediately preceding such determination or decision, has made a false statement or representation knowing it to be false, or has knowingly failed to disclose a material fact, to obtain or increase any benefit or payment under this title, the unemployment compensation of any other state, or any other program of the federal government which is administered in any way under this title, either for himself or any other person. Overpayments that have been fraudulently obtained and any penalty assessed against the individual pursuant to § 60.2-636 shall be recoverable as provided in § 60.2-633.

5. If such separation arose as a result of an unlawful act which resulted in a conviction and after his release from prison or jail until he has performed services for an employer for (i) 30 days, whether or not such days are consecutive, or (ii) 240 hours, and subsequently becomes totally or partially separated from such employment.

6. If such separation arose as a condition of the individual's parole or release from a custodial or penal institution and such individual was participating in the community corrections alternative program pursuant to § 19.2-316.4.

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